

ST 03-0083-GIL 07/07/2003 TELECOMMUNICATIONS EXCISE TAX

This letter describes the potential telecommunications tax liability of a business that provides Internet kiosks. See 86 Ill. Adm. Code 495. (This is a GIL.)

July 7, 2003

Dear Xxxxx:

This letter is in response to your letter dated March 3, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I need a ruling on the matter of public Access Internet kiosks placed in businesses within the state of Illinois by my company.

I build, own, and place public access internet kiosks in business as a pay for internet access. To describe the business in detail would be described as follows:

I build the computers and purchase the enclosures from an out of state source. I assemble the kiosks, and place them in business with an agreement between the business owner and my self to each receive a portion of the revenue the machine brings in by way of credit card reader, and bill acceptor. I connect the machine to an ADSL connection and this cost is absorbed by my company.

These machines charge for internet connection time only. Once online you can send & receive e-mail, video e-mail, surf the web, play an online game, chat room communications, or anything else your home computer will let you do. Please note that if the internet connection is lost, these machines do nothing!

Question #1: Do I need to purchase a coin operated amusement device decal for each of these machines??

Question #2: Are these machines subject to the telecommunications tax???

**DEPARTMENT'S RESPONSE:**

The Coin-Operated Amusement Device and Redemption Machine Tax Act (35 ILCS 510/1 et seq.) applies to both coin-operated amusement devices and redemption machines. A coin-operated amusement device includes any "...device operated or operable by insertion of coins, tokens, chips or

similar objects...which returns to the player thereof no money or property or right to receive money or property..." 35 ILCS 510/1. A redemption machine is defined in Section 28-2(a)(4) of the Criminal Code of 1961 as:

"....a single-player or multi-player amusement device involving a game, the object of which is throwing, rolling, bowling, shooting, placing, or propelling a ball or other object into, upon, or against a hole or other target, provided that all of the following conditions are met:

- (A) The outcome of the game is predominantly determined by the skill of the player.
- (B) The award of the prize is based solely upon the player's achieving the object of the game or otherwise upon the player's score.
- (C) Only merchandise prizes are awarded.
- (D) The average wholesale value of prizes awarded in lieu of tickets or tokens for single play of the device does not exceed the lesser of \$5 or 7 times the cost charged for a single play of the device.
- (E) The redemption value of tickets, tokens, and other representations of value, which may be accumulated by players to redeem prizes of greater value, does not exceed the amount charged for a single play of the device." 720 ILCS 5/28-2(a)(4)."

The Internet kiosks described in your letter do not qualify as either a coin-operated amusement device or a redemption machine and are not subject to the tax imposed under the Coin-Operated Amusement Device and Redemption Machine Tax Act (no decal is required under the Act).

The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. The tax imposed thereunder shall be collected from the taxpayer by a retailer maintaining a place of business in this State and remitted to the Department, 35 ILCS 630/5.

The Department began collecting the Simplified Municipal Telecommunications Tax beginning with bills issued on and after January 1, 2003. See 35 ILCS 636/5-1 et seq. The Simplified Municipal Telecommunications Tax is generally imposed in the same manner and on the same tax base as the State's Telecommunications Excise Tax.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers. Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).)

Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain

access to the Internet, are not considered to be telecommunications retailers. See for example subsection (d) of the enclosed copy of 86 Ill. Adm. Code 495.100.

It is our general understanding that most Internet access providers do not, as part of their billing, charge customers for such line charges, but instead, pay to their telecommunications providers all transmission costs that they incur in providing the service. Generally, the customers pay to their providers all transmission costs that they incur while using the service. The single monthly fee charged by such retailers, which often represents a flat charge for a package of items including Internet access, E-mail, and electronic newsletters would generally not be subject to the Telecommunications Taxes.

However, please note that persons providing customers with the Internet access described above, but who also provide customers the use of 1-800 service, and separately assess customers with per minute charges for the use of such 1-800 numbers, are considered to be telecommunications retailers. Such retailers will incur Telecommunications Excise Tax on charges made for such 1-800 services. If, however, such Internet service providers do not separately assess customers with per minute charges, but pay their own providers for all transmission costs for the 1-800 service, they are not considered to be telecommunications retailers.

If you are not separately assessing your customers with per minute charges for the telephone connections and are paying tax to your suppliers on those telephone connections, you would not be considered a telecommunications retailer and would not incur telecommunications taxes in this State.

For your general information, please note that if no tangible is transferred in the operation of your Internet kiosks, no Retailers' Occupation Tax liability would be incurred on the gross receipts from the operation of those kiosks. I understand that you remain the owner of the kiosks and the computers and do not sell the kiosks or the computers to the businesses where you locate them. Be aware that any materials used to construct the Internet kiosks and the computers housed in them are subject to Use Tax liability on the cost price of those items.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

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Associate Counsel

TDC:msk  
Enc.